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**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

Commonwealth Edison Company)
Commonwealth Edison Company of Indiana)

Docket No. ER01-2992-000

**COMMENTS OF THE
ILLINOIS COMMERCE COMMISSION**

Pursuant to Rule 211 of the Commission's Rules of Practice and Procedure, 18 C.F.R. 385.211, the Illinois Commerce Commission ("ICC") hereby submits its comments in the above-captioned proceeding in response to a filing submitted by Commonwealth Edison Company ("ComEd") on August 31, 2001, wherein ComEd proposed rate changes, and particularly increases, for the base rate component and Schedule 1 component of ComEd's electric transmission rates ("ComEd's Rate Filing"). The ICC respectfully requests that the Commission: 1) reject ComEd's levelized ratemaking proposal; 2) initiate a hearing and direct its Staff to investigate the justness and reasonableness of ComEd's proposed rates; and 3) suspend ComEd's proposed rates for the maximum period allowed pending their investigation.

I. INTRODUCTION AND BACKGROUND

Pursuant to a settlement agreement among the Midwest Independent System Operator, Inc. ("MISO"), certain transmission owners in the MISO and the Alliance Companies, the Alliance Companies were required to file transmission rates for the Alliance Regional Transmission Organization ("ARTO") no later than 120 days prior to the transmission service

date.¹ Consequently, the Alliance Companies submitted their proposed transmission rates for the ARTO on August 31, 2001, fifteen days late. In their filing, the Alliance Companies provide rate schedules applicable to a rate structure that provides for zonal rates for loads in each ARTO zone, and a single regional through and out rate. The largest component of each of the ARTO's zonal rates, the zonal facilities charge, will be comprised of ComEd's and the other Alliance Companies' individual system rates (existing rates for five of the Alliance Companies and proposed new rates for the other five companies).

On August 31, 2001, simultaneously with the Alliance Companies' rate filing, ComEd filed proposed revisions to its electric transmission rates to establish new base transmission rates and new rates for Schedule 1 service. Notably, ComEd's transmission rate filing is voluntary. No aspect of FERC's RTO policy or the Alliance RTO proposal required ComEd to make its rate filing.

ComEd states that the proposed rate changes are necessary to properly reflect ComEd's costs of providing transmission and scheduling services to the ARTO. In addition, ComEd states that the proposed transmission rates reflect the cost changes resulting from the corporate restructuring undertaken by ComEd's parent corporation, Exelon Corporation, to separate its generation and other competitive businesses from its regulated energy delivery business. In particular, ComEd states that ComEd's generation-related assets and liabilities were transferred to an Exelon affiliate, Exelon Generation Company, LLC.²

The proposed revisions that ComEd seeks will allow ComEd to recover a total of \$342.2 million in base rate revenues for each year of the ARTO transition period for providing

¹ See, *Alliance Companies, et al.*, 96 FERC ¶ 61,052, slip op. at 20-21 (2001); *Illinois Power Company, et al.*, 95 FERC 61,183 (2001), *reh'g denied*, 96 FERC ¶ 61,026 (2001).

² Transmittal Letter at 3.

transmission services in the ComEd zone, a 102% increase relative to the revenue requirement for transmission service that was approved by the Commission on July 31, 2000.³ Such an increase in revenue requirements, in conjunction with ComEd's new billing determinants, leads to an increase of 83.15% in the transmission rate that ComEd proposes to charge (from \$0.95/kW-month to \$1.74/kW-month).⁴ Additionally, ComEd seeks to increase the revenue requirement associated with ancillary service Schedule 1 to \$20.4 million, a 26% increase relative to the revenue requirement for Schedule 1 service that was approved by the Commission on July 31, 2000.⁵

Finally, in addition to the transmission rate base additions, transmission expense increases and increased allocation of costs to the transmission function, ComEd (1) seeks a rate of return on common equity of 14.00%;⁶ and (2) proposes to calculate rates on a gross levelized basis, rather than using the traditional depreciated non-levelized method.⁷

The ICC respectfully requests that the Commission reject ComEd's proposal to utilize the levelized ratemaking methodology. As explained *infra*, acceptance of ComEd's levelized ratemaking proposal would result in artificially high transmission rates, and an unjust and unreasonable windfall to ComEd at the expense of transmission ratepayers. In addition, the ICC respectfully requests that the Commission initiate a hearing to investigate the justness and reasonableness of ComEd's proposed transmission rates, and suspend ComEd's proposed rate increases for the maximum time permitted pending their investigation.

³ CEC-300, Statement BK, Schedule 1, ln. 22-23; see also, *Commonwealth Edison Company*, 92 FERC ¶61,113 (July 31, 2000)(authorizing ComEd's current rates).

⁴ *Id.*, Statement BL at 1, ln. 5.

⁵ *Id.*, Statement BK, Schedule 1, ln. 22-23.

⁶ CEC-400 at 4, ln. 23.

⁷ CEC-200 at 7, ln. 17.

The ICC makes this latter request although it declines to address, herein, aspects of ComEd's transmission rate filing other than ComEd's request to utilize levelized rates. In particular, the ICC will not herein address: (1) the appropriate rate of return on equity; (2) the appropriateness of an increase to ComEd's transmission rate base; (3) the appropriateness of an increase to ComEd's transmission expenses; or (4) ComEd's proposal to modify the allocation of costs to the transmission function. As explained *infra*, the ICC is evaluating similar testimony that has been filed by ComEd in a proceeding on ComEd's Delivery Services Tariff that is currently pending before the ICC.⁸ In that case, the ICC is investigating questions and concerns raised by intervenors on numerous aspects of ComEd's filing that ComEd supports with evidence similar to that contained in ComEd's present filing before the Commission.

II. DISCUSSION

A. The Commission should reject ComEd's proposal to switch from depreciated non-levelized ratemaking to gross-levelized ratemaking.

In this transmission rate proceeding, ComEd seeks to increase its base transmission rate revenue requirement to \$342.2 million, a 102% increase relative to ComEd's current transmission revenue requirement. In addition, ComEd seeks to increase the revenue requirement associated with ancillary service Schedule 1 to \$20.4 million, a 26% increase relative to that currently authorized by the Commission.⁹ In support of its proposed revenue requirement, ComEd provides the testimony of Mr. Alan C. Heintz.

⁸ See, Petition for approval of delivery services tariffs and tariff revisions and of residential delivery services implementation plan, and for approval of certain other amendments and additions to its rates, terms, and conditions, *Commonwealth Edison Company*, ICC Docket No. 01-0423 (filed June 1, 2001).

⁹ Exhibit CEC-200 at 7, ln. 10.

Citing Order 2000, Mr. Heintz employs the levelized rate methodology to derive ComEd's proposed revenue requirements.¹⁰ In Order 2000 and 2000-A, the Commission stated that the use of levelized rates may be appropriate in the RTO context.¹¹ The Commission explained that one of the main reasons for allowing the use of levelized rates is to *address concerns of reduced utility revenues* associated with RTO formation.

The use of the levelized rate methodology in the context of ComEd's rate request, however, is inappropriate because the ARTO rate design being advanced by the Alliance Companies, and supported by ComEd, already contains provisions designed to address the issue of lost revenues due to membership in an RTO. In its August 31, 2001 rate filing, the Alliance Companies present the testimony of J. Stephen Henderson.¹² In his testimony, Mr. Henderson states that the intent of the Alliance RTO regional rate structure is to collect the amount of revenue lost as a result of the elimination of rate pancakes.¹³ The ARTO rate structure recovers these lost revenues through the application of a zonal transmission adjustment ("ZTA"),¹⁴ super-regional rate adjustment ("SRA")¹⁵ and the regional through and out rate ("RTOR").¹⁶ The ZTA, SRA and RTOR ensure that each transmission owner is made whole with regard to transmission revenues lost as a result of joining the RTO. Accordingly, the use of levelized rates by ComEd in this proceeding violates the basic assumption underlying the Commission's discussion of

¹⁰ *Id.*, ln. 17.

¹¹ Order No. 2000, *Regional Transmission Organizations*, 65 Fed. Reg. 809, slip op. at 31,194 (Jan. 6, 2000), FERC Stats. and Regs. ¶ 31,089 (1999), *order on reh'g*, Order No. 2000-A, 65 Fed. Reg. 12,088, slip op. at 31,386 (Mar. 8, 2000), FERC Stats. and Regs. ¶ 31,092 (2000).

¹² Wholesale Electric Transmission Rate Filing, Exhibit JSH-1, *Alliance Companies, et al.*, Docket No. RT01-88-006 (filed Aug. 31, 2001).

¹³ *Id.* at 6, ln. 10.

¹⁴ *Id.*, ln. 16.

¹⁵ *Id.* at 8, ln. 3.

¹⁶ *Id.* at 9, ln. 2.

levelized rates in Orders 2000 and 2000-A, i.e., that the elimination of rate pancaking resulting from RTO formation would result in utility lost revenues.

Furthermore, in numerous Commission opinions, the Commission has placed an obligation on the utility wishing to switch from non-levelized to levelized rates to prove that the utility's proposal to use levelized rates to recover capital costs is reasonable when compared to the method used to recover capital costs in the past.¹⁷ ComEd, however, fails to provide any substantial evidence to justify the switch from non-levelized rates beyond the Commission's general statements that the use of levelized rates *may* be appropriate in the RTO context.

ComEd argues at length that switching to levelized rates in this proceeding should be accepted because the service that the Alliance RTO will provide is "new service."¹⁸ Indeed, Order 2000 states that levelized ratemaking may be appropriate in establishing initial rates under an RTO structure "where an RTO reflects a fresh start with respect to the provision of transmission services."¹⁹ However, Order 2000 specifically cites as "new service" circumstances where "the transmission customers of the RTO may be significantly different than the traditional, captive customers, that formerly took transmission service."²⁰

These circumstances do not hold for ComEd in this proceeding. This proceeding is intended to establish the zonal rates for service to loads within ComEd's zone of the Alliance RTO. The loads within ComEd's zone of the Alliance RTO are, for the most part, the same loads that exist now within ComEd's service territory and that existed within ComEd's service territory during the test years underlying previous ComEd rate cases. In short, the ultimate loads

¹⁷ See, *American Electric Power Service Corp.*, 88 FERC ¶61,141 at ¶61,442 (1999); *Allegheny Power Service Corp.*, 85 FERC ¶61,275 at ¶62,117 (1998); *Kentucky Utilities Co.*, 85 FERC ¶61,274 at ¶62,100 (1998).

¹⁸ Transmittal Letter at 5.

¹⁹ Order 2000 at ¶31,194.

²⁰ *Id.*

to be served in ComEd's zone are not significantly different than those previously served by ComEd's transmission service. Therefore, ComEd is not seeking to utilize levelized rates in the context of "new service" because the transmission customers are not "new" as assumed in Order 2000.

Furthermore, ComEd's transmission plant is highly depreciated. Data provided by ComEd shows that gross transmission plant is \$1,859,708,536.²¹ ComEd's transmission accumulated depreciation is \$665,127,191.²² Therefore, ComEd's own numbers show that its facilities are approximately 36% depreciated, and that percentage may be higher if ComEd's gross transmission plant is determined by the Commission to be lower than that advanced by ComEd. As the Commission recognized in Order 2000 and *Maine PSC*,²³ in situations where there is a significant amount of accumulated depreciation, levelized rates provide a utility with increased revenues by producing higher rates than a non-levelized approach for the same depreciated investment base.²⁴ Accordingly, if the Commission were to grant ComEd's levelized ratemaking request, then ComEd would effectively be able to recover its accumulated depreciation a second time in rates. In other words, the implementation of levelized rates would result in a windfall to ComEd of more than \$665 million dollars to be recovered in a future revenue stream generated by higher transmission rates.

Finally, the ICC is concerned with ComEd's proposal because the use of levelized rates would negatively impact retail competition in Illinois due to the fact that the transmission

²¹ CEC-300, Statement AD, at 3.

²² *Id.*, Statement AE, at 1.

²³ *Maine Public Service Company*, 85 FERC ¶61,412 (1998).

²⁴ *See*, Order 2000 at ¶31,193.

component of bundled retail rates in Illinois was determined on a net plant basis.²⁵ With bundled retail rates effectively frozen in Illinois through the end of 2004, any increase in the unbundled transmission rate will serve as a disincentive for retail customers to switch to unbundled service. The effect of a transmission rate increase resulting from the switch to levelized transmission rates would be to take much of the competitive pressure off of ComEd at the retail level.

For all the aforementioned reasons, the ICC respectfully requests that the Commission reject ComEd's proposal to utilize levelized ratemaking in this proceeding. As explained, ComEd's arguments for levelized ratemaking are either not relevant or not persuasive. Under current circumstances, Commission approval of ComEd's request to switch from depreciated non-levelized ratemaking to gross levelized ratemaking would result in artificially high transmission rates that would permit ComEd to over-recover its costs, and would create an unjust and unreasonable windfall to ComEd at the expense of transmission ratepayers. Accordingly, the Commission should reject ComEd's levelized rate proposal.

B. The Commission should initiate a hearing and direct its Staff to investigate the justness and reasonableness of ComEd's proposed transmission rates.

ComEd states that its proposed rate increases are necessary to properly reflect ComEd's costs of providing transmission and scheduling services to the ARTO. In addition, ComEd states that the proposed transmission rates reflect the cost changes resulting from the corporate restructuring undertaken by ComEd's parent corporation, Exelon Corporation, to separate its generation and other competitive businesses from its regulated energy delivery business. In particular, ComEd states that ComEd's generation-related assets and liabilities were transferred

²⁵ Order, *Commonwealth Edison Company*, ICC Docket No. 99-0117, at Appendix A, Schedule 3, ln. 3 (Aug. 27, 2000), as amended (Sept. 13, 2000).

to an Exelon affiliate, Exelon Generation Company, LLC.²⁶ In addition, ComEd requests Commission authorization of a 14% return on equity allowance in its transmission rates. As explained *supra*, all these elements, in addition to the proposed switch to levelized rates previously discussed, lead to a 102% increase over the transmission revenue requirement recently approved by the Commission for ComEd. In support of this proposed increased revenue requirement, ComEd provides the testimony of Mr. John E. Ebright (CEC-100), Mr. Alan C. Heintz (CEC-200), Mr. William E. Avera (CEC-400) and Mr. Steven T. Naumann (CEC-500).

The ICC declines to address these aspects of ComEd's transmission rate filing herein because similar testimony has been filed by ComEd in a proceeding on ComEd's Delivery Services Tariff ("DST") that is currently pending before the ICC.²⁷ The ICC notes, however, that intervenors (including the ICC Staff) in the ICC proceeding have raised a number of concerns and questions with regard to similar aspects of ComEd's DST filing. The ICC, therefore, respectfully recommends that the Commission set these matters for hearing and direct its Staff to conduct an investigation into ComEd's transmission rate filing. The Commission's Staff, if it chose, could consult the public record that is available in the ICC proceeding.

²⁶ Transmittal Letter at 3.

²⁷ See, Petition for approval of delivery services tariffs and tariff revisions and of residential delivery services implementation plan, and for approval of certain other amendments and additions to its rates, terms, and conditions, *Commonwealth Edison Company*, ICC Docket No. 01-0423 (filed June 1, 2001).

III. CONCLUSION

WHEREFORE, for each and all of the forgoing reasons, the ICC respectfully requests that the Commission: 1) reject ComEd's levelized rate-making proposal; 2) initiate a hearing and direct its Staff to investigate the justness and reasonableness of ComEd's proposed transmission rates; 3) suspend ComEd's proposed rates for the maximum period allowed pending their investigation; and 4) grant any and all other appropriate relief.

October 2, 2001

Respectfully submitted,

ILLINOIS COMMERCE COMMISSION

/s/ Sarah A. Naumer

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CERTIFICATE OF SERVICE

I hereby certify that I caused a copy of the foregoing Comments of the Illinois Commerce Commission to be served this day upon each person designated on the official service list compiled by the Secretary in this proceeding in accordance with the requirements of Rule 2010 of the Commission's Rules of Practice and Procedure.

Dated at Chicago, Illinois, this 2nd day of October, 2001.

/s/ Sarah A. Naumer

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